

## HUMAN SERVICES BOARD

# INTRODUCTION

Because this matter raises jurisdictional issues, the parties made offers of proof but no evidentiary hearing was held. The petitioner was an employee of a non-profit organization that contracts with the Department of Social and Rehabilitation Services to provide certain services to children in its custody. The petitioner as part of her duties was caring for a child in SRS custody. During a meeting between employees of SRS and the contractor regarding this child, SRS requested that the petitioner be removed from caring for the child due to some negative information it had

about the petitioner. SRS agrees that this much is true. The contractor agreed to take this action and has not assigned the petitioner to any cases involving SRS children. The petitioner claims that the effect of SRS' position is to prevent her from working in her chosen field. She claims that the information SRS has is false and that she has contacted the SRS supervisor by telephone to discuss this matter but has been told only that it is SRS' right to decide who works with children in its custody. The petitioner claims that she is supported by the contractor with regard to this appeal and brought her supervisor to testify on her behalf. She asks that the Board find that the statements are untrue and order SRS to refrain from interfering with her right to work.

#### ORDER

The Department of Social and Rehabilitation Services' motion to dismiss for lack of jurisdiction is granted.

#### REASONS

The ability of the Human Services Board to hear cases and grant relief is conferred by statute. The statute details

what persons may come before the Board and what subject matter may be considered:

Hearings

- a. An applicant for or recipient of assistance, benefits or social services from the department of social and rehabilitation services . . . or an applicant for a license from one of those departments or offices, or a licensee, may file a request for a fair hearing with the human services board. An opportunity for a fair hearing will be granted to any individual requesting a hearing because his or her claim for assistance, benefits or services is denied, or is not acted upon with reasonable promptness; or because the individual is aggrieved by any other agency action affecting his or her receipt of assistance, benefits or services, or license or license application; or because the individual is aggrieved by agency policy as it affects his or her situation.

3 V.S.A. § 3091

The petitioner is neither an applicant for nor recipient of assistance, benefits or social services from SRS nor is she a licensee. Her only relationship with SRS is as an employee of a subcontractor. The above statute does not confer "standing" to appeal to the Board on such an individual. See Fair Hearing No. 12,206.<sup>1</sup> This case is much like a recent one in which the Board denied standing to a would-be contractor who was dissatisfied with an agency's decision not to use its

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<sup>1</sup> The petitioner should note that the above statute would not even allow the Board to hear a grievance from a direct employee of SRS who had the same complaint.

services. The Board held in that case that 3 V.S.A. § 3091(a) does not confer any right to appeal through this process to "providers" of services to agency clients. Fair Hearing No. 15,443. In that decision, the Board reaffirmed that only those seeking benefits or licenses from the agencies are given standing by the statute.<sup>2</sup> As the Board noted in that case, the petitioner may have a judicial remedy in some other forum such as a state court but that the Board cannot take jurisdiction absent a specific statutory authorization. Since the Board has no jurisdiction, the Department's motion to dismiss must be granted. The petitioner is encouraged to contact an attorney with regard to what her rights might be in another forum.

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<sup>2</sup> It should be noted that other statutes confer specific jurisdiction on the Board to hear certain other kinds of appeals such as requests for the expungement of registered findings of abuse and neglect. See 33 V.S.A. § 4916(h). The petitioner does not claim that the agency has made any such finding against her with regard to that process.